

REMARKS

Claims 1-20 and 45-68 are pending. Claims 21-44 were canceled by the Examiner in response to a restriction requirement imposed by the Examiner under 37 C.F.R. § 1.142. Applicant disagrees that claims 21-44 constituted a “serious” search burden on the Examiner as required by MPEP 803 to justify a restriction. Nevertheless, Applicant has canceled claims 21-44 and has added new dependent claims 45-48 and claims 49-68 directed to subject matter previously presented. No new matter has been introduced by way of this amendment.

As an initial matter, Applicant respectfully submits that the Office Action dated June 1, 2005 was improperly made final. Applicant previously requested an interview and submitted an Applicant Initiated Interview Request form concurrent with filing of an Amendment on February 22, 2005. The Examiner made the Office Action final without scheduling or conducting an interview with the Applicant, to which Applicant is entitled. In addition, the Examiner has incorrectly described Applicant’s prior arguments in paragraph 17 of the Final Office Action, rather he repeated the claim language of claim 1. The Examiner did not clearly set forth the grounds of rejection or respond to the specific arguments raised by Applicant in the prior Amendment filed on February 22, 2005. See MPEP §§ 707.07(d) (“When a claim is refused for any reason relating to the merits thereof it should be ‘rejected’ and the ground of rejection fully and clearly stated.”) and 707.07(f) (“Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.”). See also C.F.R. §§ 1.104 and 1.113 (“In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.”). In the event the Examiner finds the Application is not in a condition for allowance after considering this Response, Applicant respectfully requests that the Examiner withdraw the finality of the Office Action and schedule an interview with the Applicant to discuss the allowability of the claims over the cited references.

The Examiner rejected claims 1-20 under 35 U.S.C. § 102(a) as anticipated by U.S. Patent No. 6,006,264 issued to Colby, et al. (hereinafter “Colby”). Applicant respectfully traverses the Examiner’s rejections.

Claims 1-20 are directed, among other things, to a first computing device that, in response to a client request packet, either performs a server application operation or forwards a second information packet to another computing device that performs the server application operation in response to the second information packet. The Examiner improperly describes a single two-step process in Colby of establishing a connection between a client and a local server through the content aware flow switch 110 as though it were instead two alternative processes. See Office Action at pages 3-4 (incorrectly describing column 8, lines 34-55 of Colby). Colby does not teach, suggest or motivate the recited alternative processes.

Turning to the specifics, independent claim 1 recites, "... a first computing device configured to: receive a first information packet originating from a client; ... identify a computing device that stores a data structure of a connection with the client; when the identified computing device is the first computing device, perform an operation of a server application ... ; and when the identified device is a second computing device, output a second information packet to the second computing device, wherein the second computing device is configured to perform the operation in response to the second information packet, the second information packet including a reference to the data structure ...." Independent claim 11 recites, "[a] method performed by a first computing device ... comprising: receiving a first information packet ... identifying a computing device that stores a data structure of a connection with the client; when the identified computing device is the first computing device, performing an operation of a server application ... ; and when the identified computing device is a second computing device, outputting a second information packet to the second computing device, wherein the second computing device is configured to perform the operation in response to the second information packet, the second information packet including a reference to the data structure, the reference being included within a single header of the second information packet."

The Examiner points to the description of a client establishing a connection with a local server (such as server 100a) through the content aware flow switch 110 of Colby at column 8, lines 34-55. The Examiner appears to contend that the content aware flow switch 110 performs an operation of a server application when it selects a local server to serve the client request and that the selected server then performs an operation of a server application when it

services the client request. Applicant does not agree that the switch 110 performs “*an operation of a server application*.” (emphasis added). There is nothing in Colby that teaches or suggests that this decision making by the switch 110 is a server application. Nevertheless, even assuming this is a correct description of what the content aware flow switch does, the Examiner is referring to two different “operations”—selecting a device and servicing the client request. Thus, Colby does not teach, suggest or motivate “when the identified device is a second computing device, output a second information packet to the second computing device, wherein the second computing device is configured to perform *the* operation in response to the second information packet,” as recited (emphasis added).

To the extent the Examiner treats a remote server in Colby as the second computing device, when a remote server is selected by the content aware flow switch, Colby generates an HTTP redirect that causes *the client* to go to the chosen remote site for service. See Column 8, lines 9-15. Thus, Colby does not teach, suggest or motivate the first computing device outputting “a second information packet to the second computing device” as recited.

Claims 2-10 and 12-20 depend, respectively, from independent claims 1 and 11. Thus, claims 1-20 are not anticipated by Colby for at least the reasons set forth above. In addition, dependent claims 3 and 13, and by virtue of incorporation, dependent claims 4-5 and 14-15, recite “wherein the reference includes an IP address of the client, a port of a second application executed by the client, an IP address of the second computing device, and a port of the first application executed by the second computing device.” As previously noted by Applicant in the Amendment dated February 22, 2005, the Examiner points to a description of the switching operations of the content-aware flow switch 110 and to a database maintained by the content-aware flow switch 110. There is no teaching or suggestion in the cited portions of Colby (or anywhere else in Colby) of a second information packet containing a reference that “includes an IP address of the client, a port of a second application executed by the client, an IP address of the second computing device, and a port of the first application executed by the second computing device.” The Examiner again fails to address this argument in the Final Office Action. Thus, claims 3-5 and 13-15 are not anticipated by Colby for the additional reason that Colby does not teach, suggest or motivate “the reference [including] an IP address of the

client, a port of a second application executed by the client, an IP address of the second computing device, and a port of the first application executed by the second computing device,” as recited.

New claim 45 depends from claim 1 and new claims 46-48 depend from claim 11, and are thus allowable at least by virtue of their dependencies. New claims 49-68 are allowable for reasons similar to those set forth above with respect to claims 1 and 11. New claims 51-53 and 62-63 are allowable for additional reasons similar to those set forth with respect above with respect to claim 3.

Therefore, for these reasons and others, claims 1-20 and 45-68 are not anticipated or rendered obvious by Colby. In the event the Examiner disagrees or finds minor informalities, Applicant respectfully renews its request for a telephone interview to discuss the Examiner's issues and to expeditiously resolve prosecution of this application. Accompanying this Amendment is a Second Request for Telephone Interview in the event the Examiner does not agree that the claims are allowable over the cited references.

In closing, Applicant respectfully requests the Examiner to enter these amendments and to reconsider this application and its early allowance. The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 09/872,539  
Reply to Office Action dated June 1, 2005

Respectfully submitted,

SEED Intellectual Property Law Group PLLC

A handwritten signature in black ink, appearing to read "Timothy L. Boller", is written over a horizontal line.

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TLB:rg

Enclosure:

Postcard

Second Applicant Initiated Interview Request Form

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